



Zoning Board of Adjustment

December 19, 2011

Hearing
(Minutes)

Prepared by:

Paul Demarest

Mr. Bianco called to order, at 8:08pm, the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, convening Monday, December 19, 2011 in the Council Chambers of the Borough Hall. He stated the meeting was being held in compliance with the provisions set forth in the New Jersey Open Public Meetings Act and had been advertised in the Borough's officially-designated newspaper. He advised that the Board adheres to an 11:00pm adjournment and no new matters would be considered after such time.

He invited all persons present to join the Board in reciting the Pledge of Allegiance.



The following Board members and professionals were present at the meeting:

- Joseph Bianco, RA/PP
- Mitchell Monaco
- Antranig Ouzoonian, PE
- Thomas Hennessey- Alternate #1
- Mark Crisafulli- Alternate #2
- Andrew Shyong, DDS- Alternate #3
- Arthur Dolson- Council Liaison
- Michael Kates, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

The following Board members and professionals were absent from the meeting:

- VACANT*- Chairperson
- Lorin Sonenshine, RA/PP- Vice Chairman
- Steven Freesman, Esq.- Secretary
- Theodore West, DDS
- Marie Hartwell- Alternate #4
- Leonard Sinowitz- Zoning Officer
- Jeffrey Morris, PE- Board Engineer



Due to both the vacancy left by former Chairman Robert Knee, as well as the absences of Vice Chairman Sonenshine and Secretary Freesman, Mr. Bianco chaired the meeting.



Prior to the meeting, the Board obtained mail correspondence received by the Land Use Department on its behalf. In lieu of the absent Secretary Freesman, Mr. Bianco read said mailings into the record.



Mr. Demarest informed that the minutes for the November 22, 2011 Hearing and November 28, 2011 (Special) Hearing would be distributed to the Board in time for its vote at the January 18, 2012 Reorganization/Hearing.

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Mr. Bianco requested 3 volunteers from the Board to serve on the Subcommittee for the December 28, 2011 Work Session. The following were assigned: Mr. Monaco, Mr. Hennessey and Dr. Shyong.

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Mr. Bianco began a discussion on what the Board can implement to compel applicants to appear before it, thereby expediting its heavy caseload. Mr. Demarest stated the proposed 2012 Board calendar uses the following format: 1.) Hearings- 3rd Wednesday of each month; 2.) Work Sessions- 4th Wednesday of each month; 3.) (Special) Hearings- 4th Wednesday each month (to immediately follow Work Session if convened); he noted that said format would remain unchanged throughout the holiday season in November and December. Mr. Bianco expressed concern about those applications, on the Board agenda for 1+ year in some instances that are the product of an enforcement action on the part of a Borough agency. Councilman Dolson noted that while an applicant petitions the Board, there is no one taking the position of supporting the Borough's Zoning Code at the outset of each meeting by stating the circumstances for the application coming to the Board; he felt such statement of fact must be part of the record. Mr. Kates pointed out that the Board's application packet should be reviewed utilizing the City of East Orange, which he felt supplied the best forms out of all of New Jersey's municipal land use boards, as a model in terms of informing applicants as to the process of applying and presenting to the Board. While he believed the Board's packet ran a close 2nd, Mr. Kates said he would reconcile its forms with plain language in time for the January 18, 2012 Reorganization/Hearing. Mr. Bianco reminded that the City of East Orange has a population of approximately 70,000; Mr. Kates replied that his concern has always been that the Board coddles applicants, which takes up the time of the Board professionals and Mr. Demarest. He said the Board procedures should be self evident when perusing its forms.

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Mr. Monaco suggested that an applicant should be required to place a lawn sign at the site which is the subject of a case once the application is perfected and public noticing is completed. Mr. Bianco questioned if the Governing Body would have to pass an ordinance to regulate such; Mr. Kates explained that while the Board cannot compel an applicant to take such a measure, it can make signage available and ask it be considered. He pointed out that case law states there must be a uniform notice provision throughout New Jersey which cannot be varied by ordinance. He revealed that the Boroughs of Alpine (where most residents have post office boxes rather than street addresses) and Fort Lee have an optional procedure in place whereby an applicant is given a lawn sign after posting a deposit, both of which are returned following the outcome of the case.

Mr. Monaco also suggested that Board members be supplied with identification cards to present when visiting subject sites; Mr. Demarest promised to inquire on such a possibility with Quentin Wiest, the Borough Administrator.

Mr. Ouzoonian questioned the validity of applicants requesting a postponement using as their reason the Board's heavy caseload. Mr. Bianco wished to set up appointments (time slots) for cases to be heard during a Hearing date, such as hourly increments with the 1st being 8:00pm and the last 10:00pm. Dr. Shyong hoped the Board would decide on an approach being it has been discussing how to get through its caseload for the past 6 meetings. Mr. Kates

pointed out that Mr. Demarest would soon be preparing a summary of the Board's yearly dispositions (to be followed by the convening of a subcommittee to finalize ideas and Mr. Kates' narrative) as part of the 2011 Annual Report to both the Planning Board and Governing Body; he noted the Report should highlight ambiguities and difficulties in the Zoning Code. Mr. Kates continued to say that the Board should determine which variances have been granted almost as of rote and recommend they be made the rule (permitted), not the exception (prohibited); as a result, he said less applications would be filed with the Board, thereby lighting its caseload. He informed that the preparation of its Annual Report is the only instance in which the Board acts as a legislative, not judicial body. Revealing his residence met all bulk standards when constructed in 1952, Councilman Dolson stated it is now non-conforming due to numerous subsequent changes to the Borough's Limiting Schedule; he stated he thought the purpose of the Limiting Schedule was to preserve open space. He believed said objective has been unsuccessful because "Mc Mansions" are being built with subsequent variances granted for as-built zoning deficiencies. Councilman Dolson believed the Board should have a mechanism to act as an intermediary between an applicant presenting an entire case and having it be denied, suggesting something along the lines of the Planning Board's Minor Site Plan Subcommittee. Mr. Monaco believed the Board could refrain from "hand-holding" applicants and making suggestions and, instead, deny more applications. Councilman Dolson expressed frustration over several Board members' attendance record for 2011.

A motion was made by Mr. Ouzoonian and seconded by Mr. Monaco, to adopt the Board's 2012 Meeting Dates and Deadlines; all eligible members present voted in favor. The Board postponed deciding whether to both start its meetings at 7:30pm (instead of 8:00pm) and schedule appointments (time slots) until the new Board roster is sworn in at the January 18, 2012 Reorganization/Hearing.

Regarding a pending request by counsel for 597 Piermont Road (Case #Z-2011-17) to present its application at a (Special) Hearing, Mr. Bianco inquired about the timeframe in which the Board must hear a case following perfection at a Work Session so to avoid an applicant from being approved by default; Mr. Kates replied that the Board has 120 days to act upon an application but that, in this particular instance, a meeting date would be set at the applicant's request and so there is no applied consent yet to extend the time in which the Board must act on the case. The Board agreed to hear said application at the January 25, 2012 (Special) Hearing. Mr. Bianco suggested that, because of a review letter received from the Bergen County Department of Planning and Economic Development as well as the Police Department's report of incidents at the intersections of both Ver Valen Street and Piermont Road and Homans Avenue and Piermont Road over the past several years, the Board should hire an independent traffic consultant to be paid for via the applicant's engineering escrow. Mr. Ouzoonian believed the pending redevelopment of "Closter Plaza" must be taken into account when reviewing said application. The Board decided to have Mr. Morris inform it whether Boswell Mc Clave Engineering, Inc. could provide its own traffic expert or, if not, he is to give 3 recommendations/quotes for the Board to consider; the Board noted that since it is probable the application would span several meetings, the choice on a traffic expert would not have to finalize by the January 25, 2012 (Special) Hearing.



A motion was made by Mr. Ouzoonian and seconded by Dr. Shyong, to memorialize the Resolution for 551 Closter Dock Road (Case #Z-2011-07); all eligible members present voted in favor.

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Mr. Bianco opened the meeting to the public for anyone wishing to comment on matters not related to a case on the evening's agenda. No one wished to be heard.
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Item #1

Case #Z-2011-14
8 O'Shaughnessy Lane
(Block 2401/Lot 18)

Applicant(s):
Representation:

Norman & Mimi Ng
Andrew Podberezniak, RA

The applicants are seeking Bulk Variance Relief for the construction of 2 additions and the relocation of an existing solarium with respect to their residence as well as an addition to their detached garage.

Andrew Podberezniak, RA, 11 High Point Drive, Springfield, New Jersey, was sworn in as Witness #1. Amy Lau-Ng, daughter-in-law of the applicants, 220 Mohegan Way, Fort Lee, New Jersey, was sworn in as Witness #2. The architect testified that the Board's concerns about excessive impervious coverage, discussed at the November 28, 2011 (Special) Hearing, have been addressed; he reminded the existing amount is 36.22% and the original proposal called for an increase to 39.22%. Mr. Podberezniak revealed that by reducing existing walkways and portions of the driveway, as well as the elimination of the existing shed (all indicated as dotted areas on the revised site plan), the impervious coverage would be 35.80%, an 881 sf reduction from what is existing. Exhibit #A-2, a site plan and architectural pre-filed with the Board, prepared by the witness dated April 20, 2011 and last revised December 7, 2011, was presented. Mr. Bianco inquired if a location survey prepared by a New Jersey-licensed surveyor had been filed, saying that landscaping is not indicated on said exhibit; Mr. Demarest stated that the Zoning Officer did not require elevations because the proposed building height of the existing 1-story house was not in question. The architect pointed out that a location survey usually does not include landscaping or topography because an owner-in-fee must pay extra for such data. He stated the proposed building coverage is 21.74%, still excessive by 1.74%, but less than what was originally-conceived (21.79%). Mr. Ouzoonian asked that the notation on Exhibit #A-2, which states the reduced impervious surfaces on-site would be changed to "unimproved areas", be changed to more precise terminology like "landscaping"; Mr. Podberezniak concurred. Mr. Bianco noted that the revision shows the kitchenette in the maid's living quarters to remain; the architect stated he was not certain the Board considered its removal a pressing issue. Mr. Kates replied his notes from the November 28, 2012 (Special) indicate the Board wished the kitchenette to be eliminated. Mr. Monaco asked for the height of the slate wall located on the northeastern section of the grounds; Mr. Podberezniak responded the retaining wall, owned by his clients, has a 6' drop in elevation to the east of it towards 14 O'Shaughnessy Lane. Mr. Bianco questioned why the 2-pronged front walkway could not be reduced in size; the architect replied that the section running along the perimeter of the house serves as a path for the 2 exterior doorways (front entrance and mechanical room) in the vicinity. Mr. Bianco asked if the maid is handicapped; Ms. Lau-Ng said she is not.

Mr. Bianco opened the meeting to the public for both questioning of Witness #'s 1 and 2 as well as general comments. No one wished to be heard.

Outcome

A motion was made by Mr. Crisafulli and seconded by Mr. Hennessey, to approve the application with the following conditions: 1.) existing kitchenette in maid's living quarters is to be converted to walk-in closet; 2.) "Final As-Built" survey is to be filed with Board at completion of project. The motion passed (**6-0: YES-** Shyong/ Crisafulli/ Hennessey/ Ouzoonian/ Monaco/ Bianco).



The Board went into closed session at 9:08pm.

Mr. Kates reminded that a prior request made by the Superior Court of New Jersey- Bergen County Law Division (concerning the Board's denial of 63 John Street <Case #Z-2009-14> to have the Board and applicant discuss whether or to what extent a conditional approval or "fairness hearing" would be acceptable) resulted in no agreement being reached. Mr. Kates explained that 11 proposed stipulations from several Board members had been forwarded to the applicant, whose counteroffer was rejected by a majority of the Board. He stated, therefore, the Board must determine if it wishes to make a counteroffer of its own or have the Court render its decision; being the Board could not decide upon such and due to its poor attendance this evening, Mr. Kates said he would ask the Court to delay issuing its decision until the Board has reconsidered its options at the January 18, 2012 Reorganization/Hearing.

Mr. Bianco reopened the meeting at 9:51pm.



There being no further items to discuss, a motion to adjourn the meeting was made by Mr. Ouzoonian and seconded by Dr. Shyong. All members present voted in favor. The meeting adjourned at 9:51pm.